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No. 88-1163 (2)

In The

Supreme Court of the United States

October Term, 1988

CENTRAL VIRGINIA EDUCATIONAL TELEVISION CORPORATION,

Petitioner,

v.

CHANG-SIN LEE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT'S SUGGESTION OF MOOTNESS

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CONSTITUTIONAL PROVISION:

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RESPONDENT'S SUGGESTION OF MOOTNESS

Respondent, Chang-Sin Lee, respectfully requests that the petition for writ of certiorari submitted by Petitioner Central Virginia Educational Television Corporation ("CVETC") be dismissed on the grounds that there no longer is an active case or controversy with respect to CVETC and, therefore, its petition is moot.

CONSTITUTIONAL PROVISION INVOLVED

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . [and] to Controversies . . . . U.S. CONST. art. III, § 2.

STATEMENT OF FACTS

In September 1985, certain Korean media published and broadcast news reports that announced the breakup of two North Korean espionage rings in the United States and West Germany. WNVC-TV, a Virginia television station wholly owned by Petitioner CVETC, and certain newspapers republished and rebroadcast the story in the United States after it was reported by the Korean media. WNVC-TV's broadcast of the news report included the depiction of two organizational charts identifying Chang-Sin Lee as part of the North Korean spy ring in the United States.

The television broadcast and other news accounts published in the United States identified Respondent Chang-Sin Lee, a South Korean citizen living in the United States, as a North Korean agent. Respondent Lee and members of his family immigrated to the United States from the Republic of Korea in October 1975. Mr. Lee graduated from Western Illinois University in 1984. He has been lawfully admitted as a permanent resident alien in the United States and currently is a United States citizen.

PROCEEDINGS IN THE LOWER COURTS

Mr. Lee filed his complaint for an action in libel in the United States District Court for the Eastern District of Virginia after Petitioner and others republished news accounts of the spy story in Korean-American communities in the United States. The district court granted summary judgment for Petitioner and the other defendants, extending to reports or acts of foreign governments the protection accorded by the official reports exception to the general rule of republication liability. On appeal, a panel of the United States Court of Appeals for the Fourth Circuit reversed and remanded the district court's decision. Petitioner sought a rehearing at the United States Court of Appeals for the Fourth Circuit, and suggested rehearing en banc. The petition for rehearing was denied on October 14, 1988. On December 3, 1988, the district court set trial for January 31, 1989.

Petitioner moved the United States Court of Appeals for the Fourth Circuit to stay the mandate on December 22, 1988. The Court of Appeals denied the motion to stay the mandate. On January 12, 1988, CVETC filed its petition for writ of certiorari in the Supreme Court of the United States.

The action proceeded to trial before a jury on January 31, 1989 in the United States District Court for the Eastern District of Virginia. At the close of Respondent's evidence in his case in chief, Petitioner CVETC moved the district court for a directed verdict. The district court granted Petitioner CVETC's motion, and dismissed the action against it. After careful consideration of the district court's ruling, Respondent has decided not to appeal the district court's decision granting Petitioner's motion for a

directed verdict and dismissing the case against CVETC. (An excerpt of the civil docket sheet reflecting the dispositive action in the case against CVETC is included herein as Appendix A.)

CVETC'S PETITION SHOULD BE DISMISSED AS MOOT

It is well settled that the Supreme Court of the United States may adjudicate only actual, ongoing cases or controversies, pursuant to the requirement of Article III, § 1 *et seq.* of the United States Constitution. *Honig v. Doe*, ___ U.S. ___, 108 S. Ct. 592, 601 (1988), *citing Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 546 (1976); *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). The Court in *Honig* held:

> [t]hat the dispute between the parties was very much alive when suit was filed, or at the time the Court of Appeals rendered its judgment, cannot substitute for the actual case or controversy that an exercise of this Court's jurisdiction requires.

Id. citing Steffel v. Thompson, 415 U.S. 452, 459 n.10 (1974); *Roe v. Wade*, 410 U.S. 113, 125 (1973). *See also Deakins v. Monaghan*, ___ U.S. ___, 108 S. Ct. 523, 528 (1988) ("Article III of the Constitution limits federal courts to an adjudication of actual, ongoing controversies between litigants."); *Hodel v. Irving*, 107 S. Ct. 2076, 2080 (1987) (" . . . the existence of a case or controversy is a jurisdictional prerequisite to the federal court's deliberations.").

Federal courts are not empowered to determine or decide moot cases. *See, e.g., United States v. Alaska S.S. Co.*, 253 U.S. 113, 116 (1920) (" . . . it is a settled principle in

this court that it will determine only actual matters in controversy essential to the decision of the particular case before it."); *California v. San Pablo and Tulare Railroad Co.*, 149 U.S. 308, 314 (1893) ("[t]he duty of . . . every judicial tribunal is limited to determining rights of persons or property which are actually controverted in the particular case before it."). Courts uniformly have followed the principle that "[f]ederal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies." *Iron Arrow Honor Society v. Heckler*, 464 U.S. 67, 70 (1983), *on remand*, 722 F.2d 213 (1984), *citing DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974).

The matters raised in CVETC's petition in the United States Supreme Court are moot because there is no case or controversy between Petitioner and Respondent. When the district court granted Petitioner's motion for a directed verdict and dismissed the action against it, the court effectively terminated the case and extinguished the existing controversy between the two litigants. Respondent's decision not to appeal the dismissal of the case against CVETC firmly establishes that he is not entitled to any relief from Petitioner in this action. No resolution of the issue presented in CVETC's petition can redress Respondent's asserted grievance. *See Iron Arrow Honor Society v. Heckler*, 464 U.S. 67, 70 (1983).

Absent an appeal, which Respondent declines to bring, there can be no favorable judicial decision that would entitle Respondent to relief against Petitioner. As to CVETC, there no longer is any active or live case or controversy. *See, e.g., Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976). Any matter

that CVETC has raised now is moot. Accordingly, because there is no case or controversy with CVETC and because the Court lacks jurisdiction to decide moot cases, CVETC's petition should be dismissed.

Respectfully submitted,

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February 10, 1989

APPENDIX A

Excerpt of docket sheet (Docket No. 86-958-A) reflecting district court's granting of CVETC's motion for directed verdict

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 86-958-A
LEE, Chang-Sin	The Dong-A Ilbo	PAGE___OF___ PAGES

DATE	NR	PROCEEDINGS
1988		
Dec. 2		TRIAL PROCEEDINGS: (AVB) This matter comes on for setting of trial date. Appearances: of counsel. Trial date 1-31-89 with jury
1989		
Jan. 24		JURY instuctions – filed by deft. Sae Gae Shimbo, Inc. bm
Jan. 24		JURY instructions – filed by pltf. bm
Jan. 24		JURY Instructions – filed by deft. Central VA Educational Television Corp. bm
Jan. 25		REQUEST for submission to jury of special verdict form – filed by deft. Central VA Educ. Television Corp. bm
Jan. 25		JURY instructions – filed by defts. Dong-A Ilbo, The Chosun Ilbo America, Inc., Joong-Ang Ilbo Daily News, The Korea Herald and The Korea Times. bm
Jan. 26		DESIGNATION of depositions to be used at trial – filed by deft. Central VA Educ. Telev. Corp. bm
Jan. 27		REQUEST for submission to jury of special verdict form – filed by deft. Sae Gae Shimbo. bm
Jan. 27		OBJECTIONS to pltf.'s jury instructions – filed by deft. Sae Gae Shimbo. bm

Jan. 27	OBJECTIONS to pltf.'s proposed jury charge – filed by deft. Central VA Educational Television. bm
Jan. 27	OBJECTIONS to defts.' proposed jury instructions and special verdict form – filed by pltf. bm
Jan. 30	OBJECTIONS to plts.'s deposition designations – filed by deft. Central VA Educ. Television. bm
Jan. 30	MOTION in limine – filed by deft. Central VA Educ. Television. bm
Jan. 30	AMENDMENT to pretrial list of exhibits – filed by deft. Central VA Educ. Television. bm
Jan. 30	LIST of trial exhibits – filed by deft. Central VA Educ. Television. bm
Jan. 30	DESIGNATIONS OF DEPOSITIONS for use at trial and objections to defts' proposed designations – filed by pltf. rws
Jan. 31	TRIAL PROCEEDINGS: Hilton, j. Linnell, r. Matter came on for trial by Jury. Appearances of parties and counsel. Jury appeared as summoned and sworn on voir dire. The following jurors were sworn to try the issue: George Kirlin, Rosann Reed, Oscar Jensen, Rosana Nichols, Vera Miller, Susan Natale. Witnesses excluded. Opening statements were made. Motion by deft WNVC-TV for s/j – taken under advisement at this time. Pltf adduced evidence. Renewed motion by deft WNVC-TV for s/j – continued under advisement at this time. Court excused jury and adjourned to return 2/1/89 @ 10:00 a.m. rws
Feb. 01	TRIAL BRIEF – filed in Open Court by CVETC. rws

Feb. 01 TRIAL PROCEEDINGS: Hilton, j. Linnell, r. Matter came on for further trial by Jury. Appearances as before. Pltf continued to adduce evidence. Korean Interpreter used. Pltf rested. In the absence of the Jury, CVETC moved for directed verdict – arguments heard and motion granted. Motion for directed verdict on behalf of deft newspapers – argued and denied. Punitive damage issue taken under advisement. Defts adduced evidence and rested. In the absence of the Jury, defts renewed motion to strike punitive damage claim – taken under advmisement [sic]. Court reviewed instruction with counsel. Punitive damages – struck from case. Closing arguments heard. Jury excused and Court adjourned to return 2/2/89 @ 10:00 at which time Court will instruct the Jury. rws

Feb. 02 TRIAL PROCEEDINGS: Hilton, j. Linnell, r. Matter came on for further trial by Jury. Appearances as previous. Court ruled against using the submitted special verdict form. Court instructed the jury. The jury retired to commence deliberations. The Jury returned with a verdict in favor of the Pltf against each deft and award damages in the sum of $15,000 as to each deft. Signed by the foreperson, George B. Kirlin, dated Feb. 2, 1989. There being no desire to have the Jury polled, Jury excused. Court adjourned. The Clerk shall enter judgment in accordance with the Jury Verdict. rws

Feb. 02 JURY VERDICT – filed in Open Court. rws

Feb. 02 JUDGMENT, in accordance with the Jury Verdict, entered and filed by the Clerk. Certified copies to counsel and OB. rws

Feb. 02	STATEMENT OF QUALIFICATIONS of Chang Ho Lee – filed in Open Court on 1/31/89. rws
Feb. 02	PROPOSED VOIR DIRE – filed in Open Court on 1/31/89 by pltf. rws